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HOUSE BILL 260

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

PAULINE K. GUBBELS

FOR THE INTEGRATED WATER AND RESOURCE PLANNING COMMITTEE

AN ACT

RELATING TO WATER RIGHTS; PROVIDING FOR CONSTRUCTIVE NOTICE TO  
SUBSEQUENT PURCHASERS OR ENCUMBRANCERS OF WATER RIGHTS WITHIN  
PENDING ADJUDICATION SUITS; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-4-17 NMSA 1978 (being Laws 1907,  
Chapter 49, Section 21, as amended) is amended to read:

"72-4-17. SUITS FOR DETERMINATION OF WATER RIGHTS--  
PARTIES--HYDROGRAPHIC SURVEY--JURISDICTION--UNKNOWN CLAIMANTS--  
CONSTRUCTIVE NOTICE TO SUBSEQUENT PURCHASER OR ENCUMBRANCER. --In  
any suit for the determination of a right to use the waters of  
any stream system, all those whose claim to the use of [~~such~~]  
the waters are of record and all other claimants, so far as they  
can be ascertained with reasonable diligence, shall be made  
parties. When any such suit has been filed, the court shall, by

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1 its order duly entered, direct the state engineer to make or  
2 furnish a complete hydrographic survey of [~~such~~] the stream  
3 system [~~as hereinbefore provided in this article~~] in order to  
4 obtain all data necessary to the determination of the rights  
5 involved. Money [~~heretofore~~] spent on hydrographic surveys by  
6 the state engineer, but not assessed against the water users on  
7 [~~the effective date of this act~~] July 1, 1965, shall not be  
8 assessed against the water users. The court in which any suit  
9 involving the adjudication of water rights may be properly  
10 brought shall have exclusive jurisdiction to hear and determine  
11 all questions necessary for the adjudication of all water rights  
12 within the stream system involved and may submit any question of  
13 fact arising [~~therein~~] in the suit to a jury or to one or more  
14 referees, at its discretion [~~and~~]. The attorney general may  
15 bring suit as provided in Section [~~75-4-4 New Mexico Statutes~~  
16 ~~Annotated, 1953 Compilation~~] 72-4-15 NMSA 1978 in any court  
17 having jurisdiction over any part of the stream system, which  
18 shall likewise have exclusive jurisdiction for such purposes,  
19 and all unknown persons who may claim any interest or right to  
20 the use of the waters of any such system, and the unknown heirs  
21 of any deceased person who made claim of any right or interest  
22 to the waters of [~~such~~] the stream system in his lifetime, may  
23 be made parties in [~~such~~] the suit by their names as near as the  
24 same can be ascertained, such unknown heirs by the style of  
25 unknown heirs of [~~such~~] the deceased person and [~~said~~] unknown

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1 persons by the name and style of unknown claimants of interest  
2 to water in [~~such~~] the stream system, and service of process on,  
3 and notice of [~~such~~] the suit, against such parties may be made  
4 as in other cases by publication.

5 In any adjudication suit, the attorney general may record a  
6 notice of the pendency of the suit with the county clerk of any  
7 county in which land is located to which water rights are  
8 appurtenant as identified in the hydrographic survey. Any  
9 notice filed shall contain the object of the suit and a  
10 description of the boundaries of the hydrographic survey and  
11 shall be constructive notice of the suit to all subsequent  
12 purchasers or encumbrancers of water rights within the  
13 boundaries of the hydrographic survey within the county. A  
14 person whose conveyance is recorded subsequent to the filing of  
15 notice by the attorney general within the county shall be  
16 considered a subsequent purchaser or encumbrancer and shall be  
17 bound by all proceedings in the suit occurring after the  
18 recording of the notice to the same extent as if the subsequent  
19 purchaser or encumbrancer were a named party to the suit."

**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 11, 1997

Mr. Speaker:

Your AGRICULTURE AND WATER RESOURCES COMMITTEE,  
to whom has been referred

HOUSE BILL 260

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 3, line 5, strike "the attorney general may" and  
insert "brought by the attorney general or in which the attorney  
general intervenes the attorney general shall".,

and thence referred to the JUDICIARY COMMITTEE.

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HAGC/HB 260

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Respectfully submitted,

\_\_\_\_\_  
G. X. McSherry, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Abeyta, Porter, Wright

Absent: None

M \H0260

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# **State of New Mexico House of Representatives**

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

**March 5, 1997**

**Mr. Speaker:**

**Your JUDICIARY COMMITTEE, to whom has been referred**

**HOUSE BILL 260, as amended**

**has had it under consideration and reports same with  
recommendation that it DO PASS.**

**Respectfully submitted,**

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**Thomas P. Foy, Chairman**

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Carpenter, Foy, Rios, Stewart

Absent: None

M \H0260

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 7, 1997

HOUSE FLOOR AMENDMENT number \_\_\_1\_\_\_ to HOUSE BILL 260, as amended

Amendment sponsored by Representative Pauline K. Gubbels

1. On page 3, line 19, after the period insert:

"The attorney general shall mail a notice of the pendency of the suit to a subsequent purchaser or encumbrancer who complies with Section 72-1-2.1 NMSA 1978 at the mailing address provided in the change of ownership form filed pursuant to that section."

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FORTY-THIRD LEGISLATURE  
FIRST SESSION

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Pauline K. Gubbels

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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